Filed 6/7/10 State Compensation Ins. Fund v. Notis Enterprises CA2/4

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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| STATE COMPENSATION INSURANCE FUND,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>NOTIS ENTERPRISES, INC.,<br><br>Defendant and Appellant;<br><br>YEVGENIYA LISITSA,<br><br>Objector and Appellant. | B213079<br><br>(Los Angeles County Super. Ct. No. BC365647) |

APPEAL from an order of the Superior Court of Los Angeles County, Edward A. Ferns, Judge. Affirmed.

Lisitsa Law Corporation and Yevgeniya Lisitsa for Defendant, Appellants and Objector.

Sheppard, Mullin, Richter & Hampton, Fred R. Puglisi, James M. Burgess and Dylan J. Price for Plaintiff and Respondent.

Notis Enterprises, Inc. (Notis) and its attorney, Yevgeniya Lisitsa, appeal from joint and several sanctions awarded by the trial court on adoption of a discovery referee's report and recommendation. We find no basis for reversal and affirm.

## FACTUAL AND PROCEDURAL SUMMARY

The State Compensation Insurance Fund (State Fund) was created in 1914 to issue workers' compensation policies to employers. (*Notrica v State Comp. Ins. Fund* (1999) 70 Cal.App.4th 911, 918.) It issued a policy to Notis in 2004 for the period July 27, 2004 to April 9, 2005, automatically renewable thereafter. Notis is in the construction industry. It is undisputed in this case that an employer's premiums for such coverage are based on a formula taking into account (a) the employer's annual gross payroll, (b) the job classifications of the workers; and (c) the loss experience and payroll of the employer over time. The employer provides the State Fund with information regarding its payroll and the nature of the work performed by the employees.

The terms of the 2004 policy gave State Fund the right to audit Notis's payroll and other records to ascertain the appropriate job classifications and final remuneration paid to employees for the purpose of calculating the final premium due for that policy year. In May 2005, State Fund conducted an audit of Notis.

Notis objected to the resulting audit bill, contending that independent contractors were improperly classified as its employees and therefore improperly included in the premium calculation. State Fund requested supporting documentation regarding the independent contractors. Although Notis provided payroll information, including Internal Revenue Service Form 1099, quarterly payroll reports, and other accounting records, it failed to provide information substantiating its claim that it employed independent contractors. No adjustment was made to the invoice based on the audit. The premium for the 2004 policy was calculated by the State Fund to be $497,265.48. State Fund claims that Notis failed to pay the premium for the 2004 policy.

Notis's 2004 policy with State Fund was automatically renewed for another policy year, April 9, 2005 to April 9, 2006 (2005 policy). The 2005 policy was cancelled on

October 31, 2005 because Notis failed to make premium payments. State Fund demanded an audit of the 2005 payroll records to determine the correct amount of premiums owed on that policy, but Notis refused. Based on the payroll for the 2004 policy year, State Fund assessed an estimated premium of $145,573.09 for the 2005 policy. Notis did not pay any part of this sum.

State Fund assigned its claim against Notis to Collecto, Inc. Collecto filed a complaint against Notis for goods and services sold and delivered, account stated, and open book account. Collecto undertook discovery from Notis, which generated the sanctions orders at issue in this appeal. The first set of discovery included form interrogatories, requests for admission, and requests for production of documents. The requests for admission concerned facts related to the 2004 and 2005 policies and invoices, and Notis's classification of certain persons as independent contractors. Notis also was asked to admit the authenticity of attached copies of invoices and other State Fund documents. The request for production sought discovery of documents supporting any response other than an unqualified admission to the requests for admission. Collecto also sought all documents exchanged between it and Notis after July 1, 2003, payroll records, and payroll reports. The interrogatories were form general interrogatories seeking basic information about the dispute.

In response to each of these requests, Notis objected: "Overbroad, overburdensome, vague and ambiguous, irrelevant, seeks information not reasonably calculated to lead to the discovery of admissible evidence." A meet and confer process led to supplemental responses by Notis. It admitted one request for admission and objected to the remaining 30 requests.

The supplemental response to requests for production 1 through 24, and 28-31 was "Overbroad, burdensome, vague and ambiguous, irrelevant, seeks information not reasonably calculated to lead to discovery of admissible evidence. Further objection is made that Responding Party could neither admit nor deny this request for admission, and no documents would support such a response. No documents will be produced." Notis agreed to produce non-privileged documents in response to requests 25-27. In addition to

the objections it made to other requests, as to some requests Notis claimed the documents were equally available to State Fund. The supplemental response to the first set of form interrogatories included some answers and some objections.

Collecto propounded a second set of discovery requests (requests for admission, for production of documents and interrogatories) on March 25, 2008. Notis objected that this was the third set of requests rather than the second and that it exceeded the statutory maximum of requests allowed.

Collecto filed separate motions to compel additional responses to the requests for admission, requests for production, and form interrogatories comprising the first set of discovery. Notis filed a consolidated opposition and offered second supplemental responses. Collecto filed separate motions to compel further responses to discovery set 2.

The trial court invited counsel to brief whether a discovery referee should be appointed. Collecto opposed appointment of a referee, arguing its straightforward collection matter did not warrant that approach. Notis supported the appointment of a discovery referee at Collecto's expense, arguing that counsel for plaintiff did "not know what it is doing." The trial court initially appointed a referee to resolve the three motions to compel responses to the first set of discovery requests, but later extended the reference to include the dispute regarding the motions to compel further responses to the second set of discovery requests as well.

About the time the second reference to the discovery referee was made, State Fund moved for permission to substitute in as plaintiff in place of Collecto because Collecto had assigned the claim back to State Fund. It also sought leave to file a second amended complaint. Notis filed opposition. The trial court granted both requests. In proceedings before the discovery referee, Notis unsuccessfully argued that State Fund was not entitled to pursue discovery propounded by Collecto.

The discovery referee recommended that the trial court grant all six of Collecto/State Fund's motions to compel further responses without objections. The referee also recommended that Notis be warned that evidentiary or terminating sanctions might be imposed if it did not comply. Collecto had requested sanctions of $7,800 on the

first set of discovery and the referee recommended imposition of sanctions of $6,580, jointly and severally against Notis and its attorney, the Law Offices of Gina Lisitsa. Sanctions of $3,000 were recommended for the motions to compel responses to the second set of discovery, also to be imposed jointly and severally against Notis and its counsel.

Notis objected to the report of the referee and State Fund responded. The trial court approved and adopted the recommendations of the referee, changing only the due date for further responses. Notis and Lisitsa appealed from the order.

## DISCUSSION

### I

We review discovery orders for abuse of discretion, reversing only for arbitrary, capricious or whimsical action. (*Liberty Mutual Fire Ins. Co. v. LcL Administrators, Inc.* (2008) 163 Cal.App.4th 1093, 1102.) Only a willful failure to comply is required to support imposition of monetary sanctions. (*Ibid.*)

Notis's first challenge to the sanctions awards is based on Collecto's pleading of a cause of action for account stated and various claimed judicial admissions by State Fund or Collecto. As we understand it, Notis argues that because a cause of action for account stated was alleged, the terms of the underlying agreement (the insurance policies) became irrelevant and therefore discovery related to the policies themselves was irrelevant.

It is true that a cause of action for account stated is based on an agreed upon sum due, which is not the case here. "To have an account stated, 'it must appear that at the time of the statement an indebtedness from one party to the other existed, *that a balance was then struck and agreed to be the correct sum owing from the debtor to the creditor*, and that the debtor expressly or impliedly promised to pay to the creditor the amount thus determined to be owing.' [Citation.] '. . . *When the account is assented to*, "'it becomes a new contract. . . .'"' [Citation.]" (*Truestone, Inc. v. Simi West Industrial Park II* (1984) 163 Cal.App.3d 715, 725, italics added.)

The original complaint filed by Collecto against Notis alleged three theories of recovery: for goods and services delivered, an open book account, and for account stated. We conclude there is no reason these causes of action could not be pled in the alternative. "Pleading alternative counts is appropriate when the plaintiff is certain of his or her legal rights but is in doubt about some of the ultimate facts, which may perhaps be largely within the knowledge of the defendant." (4 Witkin, Cal. Procedure (5th Ed. 2008) Pleading, § 403, p. 543; see also *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 29 [inconsistent theories of recovery may be pleaded].)

The record before us establishes that the amount owed by Notis for premiums on the 2004 and 2005 policies is disputed and therefore State Fund's ability to recover on the cause of action for account stated is questionable. But at this early stage of the litigation, in light of the other causes of action pled, discovery into the circumstances of the premium dispute was within the scope of the discovery statutes. The objection lacks merit.

Notis also argues: "The pending motion to enforce was from 2007 and by 2008 the subject matter made the motions to compel irrelevant as there had been a change in the parties, legal basis and the causes of action of the dispute." We have reviewed the discovery requests which were the subject of the motions to compel, and which resulted in the sanctions order against Notis. The discovery sought was relevant to the attempt to quantify and recover the premiums Notis owes on the policies issued by State Fund.

II

Notis raises a number of arguments challenging State Fund's standing and right to pursue the discovery initially propounded by Collecto. Each is based on a fundamental misunderstanding of the assignment by State Fund to Collecto, and the reassignment to State Fund.

*A . Policy Provisions Regarding Assignment*

Notis argues Collecto lacked standing to sue because the insurance policy provides that it cannot be assigned, citing page 228 of appellants' appendix. This page of the record is page 1 of a State Fund workers' compensation and employer's liability

insurance policy. The introduction states: "In return for the payment of the premium and subject to all terms and conditions of this policy, we (the State Compensation Insurance Fund) agree with *you* (*the employer named in the Declarations*) as follows: . . ." (Italics added.) General Section A on that page describes the policy and states the policy "is a contract of insurance between you and us. It is non-transferable."

We agree with State Fund that this clause prohibits the transfer of the *policy*. But it does not restrict the assignment of a debt resulting from failure to pay premiums due under the policy. The word "It" refers to the contract of insurance and its attendant obligations and rights. Nothing in this clause indicates that a debt for unpaid premiums may not be assigned.

Notis cites Part Six of the policy, paragraph C as an express prohibition of assignment. The provision provides: "Transfer of Your Rights and Duties [¶] Your rights or duties under this policy may not be transferred without our written consent." As we have seen, "you" is defined in the policy as referring to Notis, not State Fund. Under the terms of the policy, this provision is unilateral, applying only to Notis, not to State Fund. State Fund did not purport to assign the policy.

Collecto filed a declaration of assignment of the claim for premiums with the trial court. That declaration, executed by a credit and collections legal representative for State Fund, states that the fund "assigns to Collecto, Inc. or their designee, our claim against the debtor listed below for the principal sum stated below, as well as claims or damages arising from the tendering of NSF checks or stop payment checks under California Law, or for any amounts payable and due to collect, sue, reassign, or enforce collection in the name of the assignee." The declaration of assignment identifies Notis as the debtor, states the policy number, and states the amount assigned as $496,394.44.

State Fund made a limited assignment to Collecto of its right to collect premiums from Notis. As we have discussed, State Fund did not purport to assign the insurance policy, and this limited assignment was not barred by the terms of the policy. The cases cited by Notis upholding an express contractual prohibition of assignment of a debt are not applicable here because there was no express prohibition of that kind of assignment.

Notis asserts: "Even if the account was properly transferred to Collecto from State Fund, then how is State Fund conducting re-audits of the account on 'March 10, 2008' when it transferred the account in 2006?," citing a declaration by an employee of State Fund filed in the trial court. The answer, again, is that State Fund did not transfer the account or policy; it transferred only its claim for unpaid premiums and related costs.

Even if there were a clause in the policy prohibiting assignment of a debt, it would not bar the assignment of the claim here. In *Trubowitch v. Riverbank Canning Co.* (1947) 30 Cal.2d 335 (*Trubowitch*), an action on a contract for sale of tomato paste, an issue arose over the validity of the assignment of a claim for damages by the seller under the contract to the plaintiffs. The contract provided that it was not assignable. (*Id.* at p. 338.) The Supreme Court held: "It is established that a provision in a contract . . . does not preclude the assignment of money due or to become due under the contract. [Citations.]" (*Id.* at p. 339; see also *Henkel Corp. v. Hartford Accident & Indemnity Co.* (2003) 29 Cal.4th 934, 944.)

Our conclusion that the assignment of the claim for unpaid premiums was valid also disposes of Notis's related arguments that Collecto had no standing to sue because the assignment was invalid, and that standing could not be conferred by substituting State Fund as plaintiff.

*B. Insurance Code Section 1733*

Notis argues it was illegal for Collecto to demand payment of the premiums because it was not a registered and licensed California insurance company or insurance agent, citing Insurance Code section 1733. That statute provides that an insurance agent receives premiums in a fiduciary capacity, a rule not relevant here.[1] (*Crusader Ins. Co. v. Scottsdale Ins Co.* (1997) 54 Cal.App.4th 121, 129.) *Middlesex Ins. Co. v. Mann* (1981) 124 Cal.App.3d 558, on which Notis relies, does not support its position. It holds that

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[1] Insurance Code section 1733 provides in relevant part: "All funds received by any person acting as a licensee under this chapter . . . as premium or return premium on or under any policy of insurance . . . are received and held by that person in his or her fiduciary capacity."

section 1733 "applies to any person who receives premium payments while acting as an insurance agent, whether licensed or not." (*Id*. at p. 571.) It does not address the role of a collection agency collecting unpaid insurance premiums. The record establishes that Collecto was not acting as an insurance agent or insurance company. We conclude that section 1733 does not apply to prohibit Collecto from instituting this collection action.

*C. Commercial Code*

Notis invokes provisions of the Uniform Commercial Code in arguing that State Fund lacks standing because the assignment was invalid. It cites no authority for the proposition that the Uniform Commercial Code applies to an insurance policy.

Insurance Code section 22 defines "insurance" as "a contract whereby one undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event." Workers compensation insurance "includes insurance against loss from liability imposed by law upon employers to compensate employees and their dependents for injury sustained by the employees arising out of and in the course of the employment, irrespective of negligence or of the fault of either party. (Ins. Code, § 109.)

Neither the Uniform Commercial Code nor the California Commercial Code applies in this case. "Section 2102 of the California Uniform Commercial Code governs the scope of application of division 2 of this Code and expressly states in part, '. . . this division applies to transactions in goods.'" (*Karl v. Commonwealth Land Title Ins. Co.* (1997) 60 Cal.App.4th 858, 872 [holding commercial code has no application in secured real property transactions].) "The term 'goods' is defined as 'all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Division 8) and things in action. . . .' [Citation.]" (*Id.* at p. 872, fn. 10, citing Cal. U. Com. Code, § 2105, subd. (1).)

"'It is established that where the commercial agreement between the parties involves the performance of services, the [California Uniform] Commercial Code has no application. [Citations.]'" (*Wall Street Network Ltd. v. New York Times Co.* (2008) 164

Cal.App.4th 1171, 1186, quoting *North American Chemical Co. v. Superior Court* (1997) 59 Cal.App.4th 764, 781.) We have found no California authority on the question whether an insurance policy qualifies as "goods" governed by chapter two of the Uniform Commercial Code. Courts in other jurisdictions have held that it does not. (See *Elrad v. United Life & Acc. Ins. Co.* (N.D. Ill. 1985) 624 F.Supp. 742, 744 [life insurance policy is not "goods" under Illinois definition of goods, identical to definition found at Cal. U. Com. Code, § 2105, subd. (1)]; *Bartley v. National Union Fire Ins. Co.* (N.D. Tex. 1992) 824 F.Supp. 624 [insurance contracts do not fit within definition of goods promulgated by UCC]; *Oxford Lumber Co. v. Lumbermens Mutual Ins. Co.* (Ala. 1985) 472 So.2d 973 [issuance of insurance contract is a service, not product subject to sale of goods provisions of UCC].)

Since the provision of insurance coverage is a service rather than a sale of goods as defined by the Commercial Code, we decline to apply it in this case.

*D. Further Performance Due*

Notis argues: "The right to receive money under a contract is an assignment which is expressly validated by the California Commercial Code. However, this assignment will be found invalid if it is established that further performance is required of the assignor. *Butler v. San Francisco Gas & Elec. Co.* (1914) 168 C 32, 41, 141 P 818." In the passage cited by Notis, the court held that the "mere assignment of moneys due or to become due, although the contract may not be assigned, is held not to be an assignment of the contract." (*Id.* at p. 41.) Notis also cites *Trubowitch*, *supra*, 30 Cal.2d 335, for the proposition that if performance by the assignor includes fiduciary services it is invalid. We have already explained that *Trubowitch* supports our conclusion that the assignment here was valid. (See also 1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 716, p. 801 ["*money damages for breach* of the contract may be assigned"].) (Italics added.) We are unable to discern how the cited authority supports Notis's position. Both cases cited stand for the proposition that a claim for money damages under a contract may be assigned despite an express clause prohibiting assignment of the contract itself.

*E. Uncertainty of Sum Due*

Notis complains that the assignment and original cause of action for account stated claimed that Notis owed $496,394.44 and that this claim was modified in the first amended complaint to $204,999.44. Notis argues: "Since Plaintiff has stated that the amount as pled was incorrect, it is clear that the sum is not certain in this case and therefore the assignment was improper." No authority to support this proposition is cited. We are "'not bound to develop [a party's] arguments for [him]'" in the absence of citation to argument and authority to support a claim. (*Truong v. Glasser* (2009) 181 Cal.App.4th 102, 115, fn. 5.) We may and do treat the contention as waived or abandoned. (*Ibid.*)

In any event, we do not see how an amendment to the amount claimed renders the assignment invalid. As State Fund points out, the uncertainty about the sum owed was Notis's responsibility because it failed to submit to the 2005 audit and obstructed discovery in this action. Notis's argument that the uncertainty of the sum owed is a defense to the cause of action for account stated should have been raised in a demurrer or request for protective order. We find no authority to conclude that this issue renders the assignment improper.

III

Notis reasons that "[i]f the original assignment by State Fund to Collecto was improper, then Collecto was not an assignee of the contract and therefore lacked the authority to assign the contract to State Fund." It follows this assertion with a repetition of its challenges to the assignment, which we already have discussed above. No other authority is cited to support this proposition. Since we have concluded the original assignment from State Fund to Collecto was valid, this argument fails.

Alternatively, Notis argues that Collecto attempted to assign more to State Fund than it received in the original assignment. It contends that in addition to the right to collect a debt from Notis, Collecto assigned the right to enforce any court order, propound and enforce discovery, seek and enforce sanctions, bring or defend any motion, and appear at any proceeding. The page of appellant's appendix cited to support this

argument is to the general section of the insurance policy rather than any assignment document.

State Fund directs us to the assignment it received from Collecto. We have reviewed it and conclude that it properly assigns the claims against Notis. Since this assignment by Collecto to State Fund occurred after the collection action was instituted, it includes an assignment of rights and duties necessary to prosecute that action.

Notis also argues Collecto attempted to assign rights and obligations not assignable under the California Uniform Commercial Code. As we have discussed, that law has no application to this case.

IV

Notis raises multiple challenges to the form and content of the requests for admission propounded by Collecto. These objections were not raised in Notis's response to either set of requests for admission. We conclude therefore that they were not preserved for appeal. (*Steele v. Totah* (1986) 180 Cal.App.3d 545, 551-552.) In any event, we have reviewed the requests and find no substance to the technical challenges raised by Notis. The requests asked Notis to admit facts regarding its policies, the premiums owed, the State Fund audit process, and the authenticity of documents related to these issues. We find no subparts as Notis contends. The requests for admission were proper and the court did not exceed its jurisdiction by imposing sanctions on Notis for failing to respond.

V

The referee combined its rulings on the two sets of discovery requests in its single order. Notis argues this was improper, and that the referee recommended sanctions on the second set before the trial court had adopted the recommendation as to the first set. We see no impropriety in this procedure. The referee was assigned to resolve the dispute over the first and second sets of discovery. In one order, he made recommendations that Notis be required to file further responses to each set of discovery and that sanctions be imposed on Notis and its counsel. Notis fails to cite authority for the proposition that this

procedure was improper. We are aware of none and conclude that this was an expeditious way to present the recommendations of the referee to the trial court.

VI

Notis argues it was improper to award sanctions against it and its attorney after Collecto had substituted out of the case and its attorneys had been replaced by attorneys for State Fund. It reasons that the only evidence regarding the amount of fees incurred in pursuing the motions to compel were by the Collecto attorneys who were no longer in the case when the trial court made its award. It cites *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431 as support for this argument. In *Townsend*, a deposition was noticed by two of multiple parties in a case. Those two parties brought a motion to compel and were awarded sanctions. The remaining parties neither noticed the deposition nor initiated the motion to compel, were found "incidental beneficiaries" to both proceedings, and as "outsiders" were not entitled to an award of sanctions. (*Id*. at p. 1438.)

The case is inapposite. As assignee of the Collecto collection action, State Fund was entitled to pursue the discovery initially propounded by Collecto, as previously discussed. Code of Civil Procedure section 368.5 provides: "An action or proceeding does not abate by the transfer of an interest in the action or proceeding or by any other transfer of an interest. The action or proceeding may *be continued* in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding." (Italics added; see also *Johnson v. County of Fresno* (2003) 111 Cal.App.4th 1087, 1096 ["assignee 'stands in the shoes' of the assignor"]; *Bliss v. Speier* (1961) 193 Cal.App.2d 125, 127 ["'A substituted party takes up the case where his predecessor left it, and one substituted as plaintiff takes the place of the original plaintiff with respect to both the benefits and the burdens of his predecessor. . . .'"].) State Fund was entitled to pursue the motions to compel further responses to the discovery originally propounded by Collecto. Declarations by counsel for Collecto were sufficient evidence to support the award of sanctions.

Notis cites *Parker v. Wolters Kluwer United States, Inc.* (2007) 149 Cal.App.4th 285 for the proposition that sanctions may not be awarded to a non-party (Collecto) or to

a party that did not propound the discovery or draft the motion (State Fund). *Parker* involved multiple defendants, only one of which had propounded discovery and moved to compel further answers, leading to terminating sanctions. It did not involve an assignment of the plaintiff's claim and substitution of plaintiff as is the case here, and is therefore distinguishable.

VII

In the section of its brief entitled "**ISSUES ON APPEAL**," Notis lists issues for which no legal argument is provided in the remainder of the brief: (1) whether the discovery referee was properly appointed to hear the discovery dispute over Notis's objections, and (2) whether the trial court erred "in adopting the findings of the discovery referee without granting a hearing and in a wholesale fashion."

Since Notis failed to develop these issues with legal argument supported by citation to authority and the record on appeal, we deem them abandoned. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 845 [""""Contentions supported neither by argument nor by citation of authority are deemed to be without foundation and to have been abandoned."""]; *Ochoa v. Pacific Gas & Electrico Co.* (1998) 61 Cal.App.4th 1480, 1488, fn. 3 [where appellant failed to "formulate a coherent legal argument" or "cite any supporting authority" the issue may be deemed abandoned and discussion by the reviewing court is unnecessary].)

VIII

In a separate motion pursuant to Code of Civil Procedure section 907 and California Rules of Court, rule 8.276(a), State Fund requests an award of $17,250 in sanctions on appeal. It argues the appeal was frivolous or brought for purposes of delay because "any reasonable attorney would agree that [Notis's] Appeal is totally and completely devoid of merit." It contends that the discovery which was the basis for the sanction award is straightforward and was met with nothing but boilerplate objections and evasive responses by Notis. State Fund claims "the utter frivolousness of Appellants' appeal demonstrates that it was brought for an improper purpose—to delay having to pay

the sanctions imposed by the trial court's October 2, 2009 order and force State Fund to expend more money to collect the sanctions due."

Alternatively, State Fund argues sanctions are warranted because appellant violated the rules of court by including numerous irrelevant pleadings in appellant's appendix; failing to provide citations to the record and to supporting authority for much of their argument; and failing to timely file their opening brief.

Although many of the arguments presented by appellant lack merit, we exercise our discretion to deny State Fund's request for sanctions on appeal. In support of this motion, State Fund cites acts or omissions by appellant, its counsel, or both, committed in the trial court proceedings. These are not relevant to the question of sanctions on appeal. "'[A]n appeal should be held to be frivolous only when it is prosecuted for an improper motive—to harass the respondent or *delay the effect of an adverse judgment*—or when it indisputably has no merit—when *any reasonable attorney would agree that the appeal is totally and completely without merit*.'" (*Gravillis v. Coldwell Banker Residential Brokerage Co.* (2010) 182 Cal.App.4th 503, 520, quoting *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.) The arguments presented do not descend to that level.

**DISPOSITION**

The sanctions order is affirmed. State Fund is to have its costs on appeal. State Fund's motion for sanctions on appeal is denied.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.**

EPSTEIN, P.J.

We concur:

MANELLA, J. SUZUKAWA, J.